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11 Trustee of Layfield & Barrett, APC

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION

In re:

PHILIP JAMES LAYFIELD,

Alleged Debtor.

Case No. 2:18-bk-15829-NB

Chapter 11

PETITIONING CREDITOR, RICHARD M. PACHULSKI, CHAPTER 11 TRUSTEE OF LAYFIELD & BARRETT, APC'S (A) JOINDER TO WELLGEN STANDARD, LLC'S RESPONSE TO ALLEGED DEBTOR PHILIP JAMES LAYFIELD'S MOTION TO DISMISS INVOLUNTARY CASE; AND (B) REQUEST FOR ENTRY OF ORDER FOR RELIEF

(Request for Judicial Notice filed concurrently herewith)

[Relates to Docket Nos. 48 and 73]

Date: October 24, 2018
Time: 10:00 a.m.
Courtroom: 1545
255 E. Temple Street
Los Angeles, California 90012
Judge: Hon. Neil W. Bason

Richard M. Pachulski (the "L&B Trustee"), petitioning creditor herein and the Chapter 11 Trustee of the bankruptcy estate of Layfield & Barrett, APC ("L&B"), hereby (i) joins in *Wellgen Standard, LLC's Response to Alleged Debtor Philip James Layfield's Motion to Dismiss Involuntary Case* [Docket No. 73] (the "Wellgen Response"), filed in response to *Alleged Debtor Philip James*

1 *Layfield's Motion to Dismiss Involuntary Case* [Docket No. 48] (the "Motion"), filed by Philip J.
2 Layfield ("Layfield"); and (ii) requests that the Court enter the Order for Relief pursuant to Rule
3 1013(a) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules").

4 In furtherance of this joinder and request (the "Response"), the L&B Trustee states:

5 **I.**

6 **JOINDER**

7 The L&B Trustee hereby joins and adopts by reference, as though fully set forth herein, the
8 Wellgen Response. On the bases set forth herein and in the Wellgen Response, the L&B Trustee
9 opposes the granting of the Motion.

10 **II.**

11 **THE L&B TRUSTEE'S CLAIM AGAINST LAYFIELD IS NOT**
12 **SUBJECT TO BONA FIDE DISPUTE**

13 For purposes of commencing the involuntary case against Layfield, the L&B Trustee asserted
14 a claim in the minimum amount of \$1,002,500.00. [Docket No. 1]. The claim is based on two state
15 court rulings, neither of which is subject to dispute.

16 First, as set forth in the *Decision and Order of Involuntary Inactive Enrollment* (the "Bar
17 Court Order"), entered by the State Bar Court of California *In the Matter of Philip James Layfield*
18 (Case Nos. 17-O-04140 (17-O-04198; 17-O-04754)), on May 18, 2018, Layfield was determined to
19 have intentionally misappropriated funds relating to the representation of four former L&B clients,
20 including Josephine Nguyen ("Nguyen"), thereby depriving L&B of fee income and reimbursement
21 of costs in connection with such clients' retention of L&B. Bar Court Order at 4-5. A true and
22 correct copy of the Bar Court Order is attached as **Exhibit "A"** to the Request for Judicial Notice
23 ("RFJN"), filed concurrently herewith.

24 Second, the Superior Court of California for the County of Orange, in the matter entitled
25 *Josephine Nguyen v. Philip Layfield* (Case No.: 30-2017-00930393-CU-BC-CJC) (the "Nguyen
26 Proceeding"), entered its Minute Order pursuant to a default prove-up hearing (the "Minute Order")
27 and determined, among other findings, that the retention agreement with Nguyen was void, that there
28 was no *quantum meruit* entitlement to fees and that Layfield's "fraud ... permeated the entire

1 relationship.” Minute Order at 2. A true and correct copy of the Minute Order is attached as
2 **Exhibit “B”** to the RFJN. The Minute Order has not been disputed and is final, as set forth in the
3 docket of the Nguyen Proceeding, attached as **Exhibit “C”** to the RFJN.

4 But for Layfield’s actions, as determined by the Bar Court Order and Minute Order, L&B
5 would have been entitled to receive a forty percent (40%) contingency fee in connection with
6 Nguyen’s legal matter. A copy of the Agreement for Legal Services and Power of Attorney between
7 L&B and Nguyen, dated February 24, 2016, which specifies the terms of L&B’s engagement and
8 contingency fee arrangement (the “Nguyen Retention Agreement”), is attached as Exhibit A to
9 Nguyen’s Complaint against Layfield, which is attached as **Exhibit “D”** to the RFJN.

10 Nguyen’s \$3.9 million settlement was paid through two insurance company checks deposited
11 into L&B’s IOLTA account as follows: \$500,000, deposited August 26, 2016; and \$3,400,000,
12 deposited on August 29, 2016. *See* Affidavit of Mark E. Speidel, Special Agent, Department of
13 Homeland Security, Homeland Security Investigations, dated February 23, 2018 (the “Speidel
14 Affidavit”), in connection with the criminal proceeding *United States of America v. Philip James*
15 *Layfield* (C.D. Cal. Case No. SA-MJ-18-0070) (the “Layfield Criminal Proceeding”), ¶ 31.a. at 24.
16 A copy of the Speidel Affidavit is annexed to the Criminal Complaint in the Layfield Criminal
17 Proceeding, and is attached as **Exhibit “E”** to the RFJN. Between August 30, 2016, and December
18 12, 2016, Layfield transferred first from the L&B IOLTA account to an L&B operating account and
19 then to his personal USAA bank account the aggregate amount of \$685,000. *Id.* ¶ 31.c. at 24-25.
20 Also, between October 16, 2016, and February 28, 2017, Layfield wired from the firm’s IOLTA
21 account to Layfield’s personal USAA account, the aggregate amount of \$317,500. Therefore, the
22 grand total associated with Nguyen’s legal matter that was transferred by Layfield to his personal
23 account was \$1,002,500.

24 Because of Layfield’s actions, which have not been disputed in two separate proceedings,
25 Layfield deprived L&B of the legal fees L&B should have earned pursuant to the Nguyen Retention
26 Agreement. Instead, Layfield collected and then diverted at least \$1,002,500 of the \$1.56 million in
27
28

1 fees that should have been paid to L&B had the Nguyen settlement funds been handled properly.¹
2 Based on the foregoing, the L&B bankruptcy estate's claim against Layfield is not subject to *bona*
3 *fide* dispute.

4 **III.**

5 **REQUEST FOR ENTRY OF ORDER FOR RELIEF**

6 Bankruptcy Rule 1011(b) provides that defenses and objections to an involuntary petition
7 shall be presented in accordance with Rule 12 of the Federal Rules of Civil Procedure ("FRCP").
8 Fed. R. Bankr. P 1011(b). FRCP 12(d) indicates that if matters outside the pleadings are presented
9 to the court, the motion must be treated as one for summary judgment under FRCP 56. Fed. R. Civ.
10 P. 12(d). FRCP 56(f)(1) gives the court the latitude to grant summary judgment in favor of the non-
11 moving party. Fed. R. Civ. P. 56(f)(1). Bankruptcy Rule 1013(a) mandates that "[t]he court shall
12 determine the issues of a contested petition at the earliest practicable time and forthwith enter an
13 order for relief, dismiss the petition, or enter any other appropriate order." Fed. R. Bankr. P.
14 1013(a).

15 The Motion provides no evidence sufficient to challenge the sufficiency of the Involuntary
16 Petition. As set forth in the Wellgen Response and this Response, none of the claims that form the
17 basis for the Involuntary Petition are subject to *bona fide* dispute. Accordingly, no genuine dispute
18 exists as to any fact material to the entry of an Order for Relief in this case and the Petitioning
19 Creditors are entitled to summary judgment. Accordingly, the Court should enter its Order for
20 Relief forthwith.

21 **IV.**

22 **RESERVATION OF RIGHTS**

23 Under the terms of the Court's *Order Setting a Hearing on Motion to Dismiss Involuntary*
24 *Case Etc.* [Docket No. 56], entered on October 5, 2018, the filing of this Response is "without
25 prejudice to filing additional papers if this Court is persuaded to set a briefing schedule and set a
26

27 ¹ Although the L&B Trustee could have claimed the entire contingency fee amount (\$1.56 million) owed to the L&B
28 bankruptcy on account of Layfield's actions, the amount set forth on the Involuntary Petition represents Nguyen-related
funds transferred to Layfield's personal accounts, as described and calculated in the Speidel Affidavit. *Id.* ¶¶ 31.c. – 32
at 24-26.

continued hearing” regarding the Motion. Accordingly, the L&B Trustee reserves the right to file additional responses, oppositions, evidentiary objections and other pleadings in connection with the Motion.

Also, the claim asserted on behalf of the L&B bankruptcy estate against Layfield in the Involuntary Petition represents a minimum undisputed amount owed by Layfield to the L&B estate. The L&B Trustee’s investigation of Layfield’s involvement with L&B is on-going and, as such, the L&B Trustee reserves the right to assert additional claims against Layfield, as well as other parties.

I.

CONCLUSION

For all the foregoing reasons, the L&B Trustee respectfully requests that the Court (a) deny the Motion in its entirety; (b) grant summary judgment to the L&B Trustee and the other Petitioning Creditors; (c) enter the Order for Relief in this case; and (d) grant the L&B Trustee such further relief as may be appropriate under the circumstances.

Dated: October 15, 2018

PACHULSKI STANG ZIEHL & JONES LLP

By /s/Malhar S. Pagay
Malhar S. Pagay
Counsel for Petitioning Creditor, Richard M.
Pachulski, Chapter 11 Trustee of
Layfield & Barrett, APC

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:
10100 Santa Monica Boulevard, 13th Floor, Los Angeles, California 90067

A true and correct copy of the foregoing document entitled (*specify*): **PETITIONING CREDITOR, RICHARD M. PACHULSKI, CHAPTER 11 TRUSTEE OF LAYFIELD & BARRETT, APC'S (A) JOINDER TO WELLGEN STANDARD, LLC'S RESPONSE TO ALLEGED DEBTOR PHILIP JAMES LAYFIELD'S MOTION TO DISMISS INVOLUNTARY CASE; AND (B) REQUEST FOR ENTRY OF ORDER FOR RELIEF** will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (*date*) **October 15, 2018**, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

☒ Service information continued on attached page

2. SERVED BY UNITED STATES MAIL:

On (*date*) **October 15, 2018**, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

Layfield & Barrett, APC
Fka Layfield & Wallace, APC
Fka The Layfield Law Firm, APC
Attn: Philip Layfield, Officer of Record
2720 Homestead Rd., Suite 210
Park City, UT 84098

Layfield & Barrett, APC
Fka Layfield & Wallace, APC
Fka The Layfield Law Firm, APC
Attn: Any Officer Other Than Philip Layfield
2720 Homestead Rd., Ste. 210
Park City, UT 84098

☒ Service information continued on attached page

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (*state method for each person or entity served*): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (*date*) **October 15, 2018**, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

VIA PERSONAL DELIVERY

Honorable Neil W. Bason
U.S. Bankruptcy Court
255 E. Temple Street, Room 940
Los Angeles, CA 90012
Attn: Mail Room Clerk-Judges Copies

By Email:
Philip Layfield phil@maximum.global

☐ Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

October 15, 2018
Date

Myra Kulick
Printed Name

/s/ Myra Kulick
Signature

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF):

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